

August 7, 2003

The Honorable Steven A. Williams
Director
Fish and Wildlife Service
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Williams:

I am writing to express serious concerns about the findings of a report issued by the National and Florida Wildlife Federations (WF) and the Council of Civic Associations, Inc., (CCA) of Estero, Florida, concluding that the Federal government is contributing to the creation of a potentially significant and costly problem in the Florida Everglades ecosystem, specifically in Southwest Florida. The report, *Road to Ruin: How the U.S. Government is Permitting the Destruction of the Western Everglades* ("Road to Ruin"), criticizes three Federal agencies¹ for failing to protect adequately the habitat and water resources of Florida's Lee and Collier Counties asserting that "[t]he same kind of misguided development that decimated the Eastern Everglades and left American taxpayers with an \$8 billion restoration bill is happening again in the Western Everglades."² The report faults the U.S. Army Corps of Engineers ("Corps") for administering a lax Clean Water Act (CWA) permitting program (Section 404) which is "effectively draining and filling the wetlands of the Western Everglades. . . ." ³ and the U.S. Fish and Wildlife Service ("FWS") for failing to apply the best available science in conserving panther habitat in the area.

The Western Everglades are a valuable national resource where the Federal government invests in the area's national refuges, preserves, and estuarine research reserves.⁴ *Road to Ruin* documents citizens'

¹ The three agencies are the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS).

² National Wildlife Federation, Florida Wildlife Federation, and Council of Civic Associations, Inc., *Road to Ruin: How the U.S. Government is Permitting the Destruction of the Western Everglades*, November, 2002, at 1.

³ *Id.*

⁴ The major features of the area include, the Florida Panther National Wildlife Refuge, the Ten Thousand Islands National Wildlife Refuge, the Big Cypress National Preserve, the Fakahatchee Strand State Preserve, the Corkscrew Regional Ecosystem Watershed, the Rookery Bay and Estero Bay Aquatic Preserves, the Corkscrew Swamp Sanctuary, and the Picayune Strand State Forest. U. S. Army Corps of Engineers, Jacksonville District, *Environmental Impact Statement on Improving the*

concerns regarding losses of watershed and wetland function, of critical habitat for threatened and endangered species, and of clean water. Not only are there concerns about water quality in coastal areas, but the groundwater which supplies water to urban areas is affected by the failure to preserve the area's natural vegetation. *Road to Ruin* concludes:

At stake is the very heart of the Western Everglades Ecosystem: its clean water, cypress domes, seagrasses, wading birds, sport and commercial fisheries, and endangered species, including the Florida panther, the wood stork, and the manatee.⁵

The report sounds a caution against repeating past mistakes, noting the extraordinary high cost of undoing damage once it is done.⁶

As Ranking Member of the Committee on Governmental Affairs, whose mandate includes the study or investigation of "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs,"⁷ I am extremely troubled by the assertions that the Corps of Engineers and the FWS have failed to fulfill their statutory mandates, thereby endangering a valuable national resource as well as threatening the future of many of our nation's other precious resources.

Enclosed is a copy of the report, along with a letter to the Corps of Engineers which briefly summarizes the findings contained in *Road to Ruin*. These include: failures by the Corps in considering the cumulative impacts of permitting decisions; in complying with existing regulatory prohibitions; and in protecting wetlands identified as "mitigation" for losses of other wetlands. The report also discusses the harm to Southwest Florida's watersheds and historic flowways and the impact of the loss of essential habitat on the likelihood of the panther's survival.

The FWS is specifically criticized for its role in decisions made by the Corps of Engineers to issue permits allowing development in priority panther habitat:

The FWS is facilitating the destruction of panther habitat by refusing to issue any jeopardy opinions when reviewing numerous development proposals even for large-scale development projects that cause the destruction of thousands of acres of panther habitat. . . . There is no question that the loss of this essential habitat is substantially reducing the likelihood of the panther's survival and recovery in the wild.⁸

Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida, July 2000, Sec. 3.1 (hereinafter "2000 EIS").

⁵ *Road to Ruin*, at Forward.

⁶ *Id.*

⁷ S. Res. 66, 108th Cong., 1st Sess. (2003)(Enacted).

⁸ *Road to Ruin*, at 10. "Jeopardize" means to engage in an action that reasonably would be expected, directly or indirectly to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

These assertions are particularly disturbing because the FWS itself has determined that the Florida panther, Florida's state animal, is one of the "most endangered large mammals in the world."⁹ Protection of the small population in Florida, estimated to number between 30 to 80 individuals, is key to survival of the panther. It is "the only known remaining wild population of an animal that once ranged throughout most of the southeastern United States from Arkansas and Louisiana eastward across Mississippi, Alabama, Georgia, Florida, and parts of South Carolina and Tennessee."¹⁰ In view of the fragile condition of the panther population, I am requesting your response to the following questions regarding the effectiveness and efficiency of the FWS in carrying out its statutory responsibilities, including its obligations under the Endangered Species Act.

1. An Environmental Impact Statement (The Southwest Florida EIS) prepared by the Jacksonville District of the Corps of Engineers, in cooperation with the FWS, to assist in making decisions regarding the issuance of Section 404 permits mapped panther habitat in the EIS study area.¹¹ Since July 2000, how many permits have been issued by the Corps of Engineers in the geographic area which is identified as panther habitat in the Southwest Florida EIS? How many have been denied? Be specific, identifying the projects permitted and those for which permits were denied.
2. (A) For each of the permits issued since July 2000, did the Corps of Engineers consult with the FWS?
(B) For each instance in which consultation did occur, please provide copies of the biological opinions or concurrences.
(C) In any instance in which the Corps failed to consult, what action was taken by the FWS?
3. According to a June 2002, news report, the Director of the South Florida Office decided that the FWS would not be "that vocal on permits anymore."¹² He hoped to persuade the Corps of Engineers to do more to protect wetlands in a "friendlier" way. Is this an accurate characterization of the FWS' approach?
 - (A) If so, what changes have occurred in the Corps' permitting practices as a result of this friendlier approach?
 - (B) How has the protection of the wetlands improved as a result? Please be specific in your response, providing appropriate documentation of the results.

⁹ U.S. Fish and Wildlife Service, Southeast Region, *South Florida Multi-Species Recovery Plan*, 2000, at 4-117.

¹⁰ *Id.*

¹¹ U.S. Army Corps of Engineers, Jacksonville District, *Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida*, July 2000, Appendix H.

¹² Michael Grunwald, "Growing Pains in Southwest Florida: More Development Pushes Everglades to the Edge," *The Washington Post*, June 25, 2002 at A-1. The Office Director was quoted as saying: "We need to be like submarines. Run silent, run deep."

4. *Road to Ruin* asserts that “only one or two staff people [are] reviewing 404 permits in the Service’s Naples office, and no one with experience in panther habitat evaluation.”¹³

- (A) Identify the qualifications of all staff, including specifically the number of and qualifications of all biologists, now handling panther issues in each of the Florida FWS Offices.
- (B) Please identify all changes made during the last three years, whether permanent or not, in the number of and the specific biologists assigned to handle panther issues in all Florida FWS Offices and explain the reasons for any changes.

5. How do applicable nationwide permits most recently issued by the Corps of Engineers affect the panther habitat identified in the Southwest Florida EIS?

- 6. (A) For each acre of panther habitat which is destroyed as a result of issuance of a permit, how much is required to be conserved?
- (B) What is done to assure compliance with this requirement?

7. Has a process been established to develop stakeholder consensus on a Habitat Conservation Plan for the panther?

- (A) If so, what were the results?
- (B) If not, why not?

8. Questions have been raised regarding the adequacy of mitigation for the loss of panther habitat. Has the FWS adopted the methodologies advanced by Dr. Dave Maehr¹⁴ for determining the responsibilities of permit applicants/holders for mitigation of panther habitat? If so, please identify and describe all independent reviews of these methodologies that the FWS conducted.

I look forward to receiving your responses to these questions.

Sincerely yours,

Joseph I. Lieberman
Ranking Member

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Enclosures (2)

¹³ *Road to Ruin*, at 11.

¹⁴ Dr. David Maehr has been retained by applicants for Section 404 permits to evaluate the impact of the measures proposed by the applicant on the panther.